Supreme Court, U.S.
FILED

99 610 JUL 29 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

CONSTANCE KRAJICEK,
Petitioner

v.

K. M. JUSTIN, JAMES SHEEHY,
DAVID BRECK, ROBERT TEMPLIN

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

APPENDIX

Constance Krajicek
In Pro Se
P.O.Box 506
Lake Orion, MI 48362
1-810-319-6767

2647

No. 98-1249

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONSTANCE E. KRAJICEK Plaintiff-Appellant	)	FILED
	)	MAR 23, 1999
		LEONARD GREEN,
v.	)	Clerk
	)	
K. M. JUSTIN, JAMES P. SHEEHY, ROBERT TEMPLIN, DAVID BRECK, Defendant-Appellees	)	**ORDER**

Before BOGGS, CLAY AND GODBOLD,* Circuit Judges

Constance E. Krajicek, appeals pro se from a district court judgment that dismissed her civil rights action under 42 U.S.C. §§1983 and 1985(3), as well as U.S. C. §§ 241-242. Her appeal has been referred to a panel of this court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not needed. Fed. R App.P. 34(a).

Krajicek alleged that a state magistrate and three state court judges had conspired to violate her constitutional rights during various judicial proceedings. On February 4, 1998, the district court granted the defendants' motion and dismissed Krajicek's case under

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*The Honorable John C. Godbold, United States Circuit Judge for the Eleventh Circuit, sitting by designation

Fed. R. Civ. P. 12(b)(6). In so ruling, the court held that each of the defendants was protected by absolute judicial immunity. It is from this judgment that Krajicek now appeals, moving for costs against the appellees.

We review the dismissal of Krajicek's case *de novo*. *See Mann v. Conlin*, 22 F3d 100, 103 (6th Cir.), *cert denied*, 513 U.S. 870 (1994)

> [J]judicial immunity is not overcome by allegations of bad faith or malice... Rather, our cases make clear that the immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. *Mireles v Waco*, 502 U.S. 9, 11-12 (1991) (per curiam) (citations omitted).

Krajicek now argues that juducial immunity does not apply and that the defendants were liable for damages under § 1983 because their actions were unconstitutional. This argument lacks merit because judicial immunity applies even when a judge acts erroneously, maliciously, or in excess of his authority. *See id.* at 12-13; *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978).

Krajicek also argues that the defendants' failure to deny all of the allegations in her complaint shows that they acted in the complete absence of jurisdiction. This

argument is unavailing because the defendants filed a motion to dismiss in lieu of an answer to the complaint. *See* Fed. R. Civ. P. 12(b)(4). Thus, we will not construe their failure

to deny all the allegations in the complaint as an admission under Fed. R. Civ. P. 8(d). Moreover, the district court properly determined that all of the defendants had acted within their jurisdiction under Michigan state law. Consequently, Krajicek's claims were properly dismissed on the basis of judicial immunity. *See Ireland v Tunis*, 113 F 3d, 1435, 1440-43 (6th Cir.) Cert. Denied, 118 S. Ct. 560 (1997), *Mann*, 22 F3d at 104-05.

The dismissal of Krajicek's claim under § 1985(3) was also proper because she did not show that the defendants were motivate by gender bias or some other class-based, invidiously discriminatory animus. *See Maki v Laakko*, 88 F3d 361, 367 (6th Cir. 1996) cert. denied 519 U.S. 1114 (1997). Moreover, the district court properly dismissed the criminal conspiracy claims that Krajicek raised under18 U.S.C. §§ 241-242, as these statutes do not provide a basis for civil liability *See Cok v. Consentino*, 876 F 2d 1, 2, (1st Cir. 1989)(per curiam).

Finally, we note that Krajicek has moved for costs against the appellees that would reimburse her for including certain documents in the joint appendix. This

motion fails because inclusion of the disputed documents was required under our local rules.

Accordingly, all pending motions are denied and the district court's judgment is affirmed Rule 34 (j) (2) (C), Rules of the Sixth Circuit

ENTERED BY ORDER OF THE COURT

/S/ Leonard Green

Clerk

No. 98-1249

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONSTANCE E. KRAJICEK,) **FILED**
Plaintiff-Appellant) **APR 30, 1999**
v.)**LEONARD GREEN,**
K.M.JUSTIN, JAMES P. SHEE-) **CLERK**
HY, ROBERT TEMPLIN, DAVID)
BRECK,) ORDER
Defendant-Appellees)

Before BOGGS, CLAY, and GODBOLD*, Circuit Judges

Constance E. Krajicek moves this court to reconsider its order affirming a district court judgment that had dismissed her civil rights case, filed under 42 U.S.C. §§ 1983 and 1985 (3), as well as U.S.C. §§ 241-242.

Upon review, we conclude that Krajicek has not cited any misapprehension of law or fact that would alter this court's prior decision. *See* Fed. R. App. P. 40(a).

Accordingly, the motion for reconsideration is denied. ENTERED BY ORDER OF THE COURT

/s/ Leonard Green,
Clerk

*The Honorable John C. Godbold, United States Circuit Judge for the Eleventh Circuit, sitting by designation.

(Rule 14, 1.(*i*)(v),(vi)

CITED AUTHORITIES:

United States Constitution. Article III, Section 1:

"... The judges, both of the supreme and inferior Courts shall hold their offices during good behaviour ... "

United States Constitution, Article VI, Paragraph 2:

"The Constitution and the Laws of the United States...which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land, and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary ... "

United States Constitution, Article VI, Paragraph 3

" ... and the Members of the several State Legislatures and all executives and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support the Constitution."

United States Constitution, First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Appendix C-1

United States Constitution, Fourth Amendment

The right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or Affirmation and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Fifth Amendment:

... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb,.... nor be deprived of life, liberty, or property, without due process of law; ...

United States Constitution, Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation to be confronted with witnesses against him, ... and to have the Assitance of Counsel for his defence.

United States Constitution, Seventh Amendment:

... where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, ...

Appendix C-2

United States Constitution, Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

United States Constitution, Fourteenth Amendment:

... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction equal protection of the laws

28 USC 144, MCR 2.003, Michigan Court Rules:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge befoe whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding, which purports to be the basis of Michigan Court Rules, MCR 2.003: (B) A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which (1) The judge is personally biased or prejudiced for or against a party or attorney:

42 USC § 1983:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of an rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USC § 1985(2):

If two or more persons in any State or Territory conspire to deter, by force, intimidation or threat; any party or witness in any court of the United States from attending such court or from testifying from any matter therein, freely, fully, and truthfully ... or if two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws;

42 USC § 1985 (3):

If two or more persons in any State or Territory conspire ... for the purpose of depriving either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 USC § 1986:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any

number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action

42 USC § 2000aa-6(c)

The United States, a State, or any other governmental unit liable for violations of this chapter under subsections (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer, ,,, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

UNITED STATES SUPREME COURT RULES: JURISDICTION ON WRIT OF CERTIORARI

Rule 10 (a):

a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;... has so departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Michigan Constitution, Article I § 2

No person shall be denied the equal protection of the law ...

Michigan Constitution, Article I § 5:

Appendix C-6

Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right ...

Michigan Constitution, Article I § 11:

The persons, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any any place or seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. ...

Michigan Constitution, Article I § 14:

The right to trial by jury shall remain but shall be waived in all civil cases unless demanded by one of the parties, in the manner prescribed by law

Michigan Constitution, Article I § 16:

Excessive bail shall not be required, ... cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Michigan Constitution, Article I § 17:

No person shall be compelled in any criminal case to witness against himself, nor be deprived of life liberty or property, without due process of law..

Michigan Constitution, Article I, § 20:

In every criminal prosecution, the accused shall

have the right to ... be informed of the nature of the accusation; ... to have the assistance of counsel

Michigan Constitution, Article VI, § 1:

The judicial power of the state is vested exclusively in one court of justice, which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish ....

Michigan Constitution, Article VI § 18:

... In any county where an additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein...

Michigan Constitution, Article VI § 19 (3):

No person shall be elected or appointed to a judicial office after reaching the age of 70 years.

Michigan Constitution, Article VII § 6:

... The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for unintentional injuries received while in his custody

Michigan Constitution Article XI, § 1:

All officers, legislative, executive and judicial, before entering upon the duties of their respec-

tive offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public post.

MCL 600.151 Same as Article VI § 1 MI Constitution

MCL 600.1821 (4):

All parties, attorneys and subpoenaed witnesses are exempt from arrest while going to, attending and returning from the places they are required to attend.

MCL 600.3101

The CIRCUIT court has jurisdiction to foreclose mortgages of real estate and land contracts.

MCL 600.6501

The provisions of this chapter apply to the district court, to municipal courts and to the common pleas court of Detroit, except as otherwise provided in statutes..

MCL 600.6521:

Except as otherwise provided or limited in statutes specifically applicable to courts of limited jurisdiction, ... the courts have jurisdiction over actions at law, ... where the amounts claimed in the matter does not exceed jurisdictional limits applicable to the courts.

MCL 691.1407 - Governmental Immunity from Tort Liability:-

(2) Except as provided in this section and without regard to the discretionary or ministerial nature of the conduct in question, each officer and/or employee of a governmental agency or its agents shall be immune from tort liabilities for injuries to persons or damages to property, while acting on behalf of a governmental agency, if all of the following are met:

(5) Judges and their staffs are immune from tort liability for injuries to persons or damage to property, whenever they are acting within the scope of their judicial and/or constitutional authority."

MCL 762.7

Each court of record having jurisdiction of criminal cases, upon good cause shown by either party, may change the venue in any cause pending therein

MCL 764.9d (2):

If a complaint is not sufficient on its face, (showing

only the law under which a defendant is charged) and if the court is satisfied that a complaint sufficient on its face cannot be drawn and filed on the basis of the available facts, or evidence, it shall dismiss the complaint.

Opinion of the Attorney General for Michigan:

OAG 86 of April 5, 1977, Constitution of 1963, Article 6, Section 19 which prohiblts the election or appointment to a judicial office after reaching age of 70, does not violate the equal protection clause of the United States Constitution, and is, therefore, valid and is in accord with the decision in Rubino v Ghezzi, 512 F2d 431 (1975)

Opinion of the Attorney General for Michigan:

OAG 5226 of September 15, 1977: As Michigan statutes setting forth bonding requirements for county oficials refer to individual bonds which 'each' officer must obtain and places the duty upon the officer to secure his or her own bond a single surety bond provided by the county covering several or all county officers and employees may not be used in lieu of the various statutory requirements imposed upon county officers that a surety covering faithful performance be furnished.

Letter showing that K.M.Justin is acting illegally as a magistrate in stead of Robert Justin, a magistrate:

State of Michigan (Seal of Michigan)
District Court - 52nd Judicial District
3rd Division - 135 Barclay Circle
Rochester Hills, MI 48307-5800

Honorable James P. Sheehy
Honorable Ralph Nelson
Honorable Julie A. Nicholson
District Judges

December 8, 1997

Mr. Gerald Poisson
Oakland County Corporation Counsel
1200 N. Telegraph Road
Pontiac, Michigan 48341

Dear Mr. Poisson:

Please find enclosed two Summons and Complaints regarding the case of Constance Krajicek vs. K.M.Justin and James P. Sheehy. The complaints were served at this Court on Friday, December 5, 1997. Please note that "K M.Justin" is Robert Justin, a Magistrate in this division.

Please notify me as soon as counsel is appointed. Thank you for your time in this matter.

Sincerely,
/s/ Lynda A. Hammerstein
Lynda A. Hammerstein
Court Administrator

/lah

Appendix C-12

The Federal Courts and the Federal System, 336 2 ed 1973 (by P. Bator, P. Mishkin, D. Shapiro and H. Weschler) by Hart and Weschler:

> "Where constitutional rights are at stake, the courts are properly astute in construing statutes, to avoid the conclusion that Congress intended to use the privilege of immunity to defeat them.

Adamski v Cole 494 NW 2d 794, 197 Mich App 124 (1992)

> Plaintiff filed complaint for land contract forfeiture in district court. Defendant had the case transferred to Circuit Court on the basis that land contract forfeiture was in excess of jurisdictional limits of district court (other claims involved in appeal to Michigan Court of Appeals)

Hackett v Kress, 133 NW 2d 221, 1 Mich App 6 (1965)
Ball v Thomas, 133 NW 2d 218, 1 Mich App 1 (1965)

> Under constitutional provisions that judges of courts of record shall not be elected or appointed to judicial office after reaching age of 70 years, age limitation applies to all judicial positions, even though they are not in court of record.

Stump v Sparkman, 435 U.S. 349 (1978)

> In determining whether an action is "judicial" we consider the nature of the act, and whether it is a function normally performed by a judge.

Mann v Conlin, 22 F3d 100 (1994), n6 and n9:

Judge is liable for money damages where judge acts in nonjudicial capacity or in complete absence of all jurisdiction (n6) Judge acts in clear absence of all jurisdiction and liable for money damages, when court of limited jurisdiction attempts to adjudicate case outside its jurisdiction. (n9)

Detroit Branch, NAACP v City of Dearborn, 434 NW 2d 444, 173 Mich App 602 (1988)

All seizures of persons, including those involving only brief detention, fall within protections afforded by this section and Fourth Amendment.

People v Heffron, 19 NW 170, 53 Mich 529

The complaint was made by a person with no personal knowledge of the case other than hearsay of unsworn witnesses whose reliability had not been proven, therefore the complaint was invalid.

People v Quinn, 356 NW 2d 10, 136 Mich App 145

Trial court has no authority to convict a defendant of an offense not specifically charged. Defendant may not be charged on basis of law alone; he must be informed of what he is supposed to have done.

Young v Duckworth, 733 F2d 482 (7th Circ. 1984)

Assistance of counsel, to be fully effective, must be continuous from time when prosecution began.

Brady v Maryland, 373 U.S. 83, 10 L Ed2d 215, 83 S Ct 1194 (1963)

Suppression of evidence favorable to the defendant violates the due process rights (Granddaddy case of "Brady decisions")

Edmond v Collins, 8 F3d 290 (5th Cir 1993) and ***U. S. v Brumel Alvarez,*** 976 F2d 1235 (9th Cir 1992) and all other "Brady" case law

The Brady doctrine requires the prosecution to produce exculpatory evidence and evidence useful for impeachment when requested to do so by defendant.

U. S. v Olin Corp., D.C.N.Y. 465 F Supp 1120 (1979)

In order to support a claim of discriminatory prosecution by defendants, Plaintiff must present facts tending to establish that it was the result of intentional and purposeful discrimination.

In re Attorney General, 341 NW 2d 253, 129 Mich App 128 (1983)

(2) Under statute allowing venue to be changed by a circuit court for "good cause shown" by either party, "good cause" concerns ability to obtain fair trial in county where action is brought, and convenience to parties and witnesses is not within meaning of the statute.

People v Plyler, 272 NW 2d 623 86 Mich App 272 ;and
"Fruit of the poisonous tree" doctrine seeks to discourage unlawful police practices by depriving the people of the advantage flowing from the "primary illegality" of police activity.

People v Tucker, 172 NW 2d 712, 19 Mich App 320 (1969)
The use of evidence proceeding from an illegal seizure are the fruits of the unlawful conduct, commonly known as the "fruit of the poisonous tree" and are totally inadmissible.

Maki v Laakko, 88 F3d 361 (6th Circ 1996) n7.5(1)
Plaintiff must show conspiracy between at least two persons, that object of conspiracy is to deprive plaintiff of equal protection of the law or of privileges and immunities under the law and injury to plaintiff as result of conspiracy.

Strength v Hubert, 854 F2d 241 (11th Circ 1988)
Freedom from malicious prosecution is a federal right protected by § 1983.

U.S. v Sneed, 34 F3d 1570 (10th Circ 1994)
Excessive government involvement occurs when governmental agency engineers and directs criminal enterprise from start to finish and defendant contributes nothing more than his presence and objections thereto.

Magna Carta of 1216:

King John: "We will make no men justices or sheriffs unless they are such that know the law of the realm, and are minded to observe it rightly."

Floyd and Barker, 77 Eng Rep (1305 Star Chamber, 1607):

Judicial immunity shall be absolute when the order of the justice is within his jurisdiction to perform.

English Declaration of Rights of 1689:

Whereas this Parliament deplores the illegality of the directed and arbitrary use of the sentencing power by the king's bench, we do hereby declare that judicial immunity shall not be absolute and then be effective only within the scope of jurisdiction.

Marbury v Madison, 5 US 137 (1803) (Cranch) Chief Justice Marshall

" ... a legislative act contrary to the constitution is not law ... then, the courts are to regard the constitution as superior to any ordinary act of the legislature; the constitution not such ordinary act must govern the case to which they both apply. It is apparent that the framers of the constitution contemplated that instrument to be a rule for the government of courts as well as the legislature...

a law repugnant to the constitution is void and that courts as well as other departments are bound by that instrument.

Mc Culloch v State, 17 US 316 (1819), Chief Justice Marshall:

> "The States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operations of the constitutional laws enacted by Congress ... The nullity of an act inconsistent with the Constitution, is produced by the declaration that THE CONSTITUTION IS THE SUPREME LAW."

Mayor, Aldermen and Commonalty of City of New York v George Miln, 36 US 102 (1837), Justice Barbour.

> "That a State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States."

Congress Globe, 39th Congress, First Session, the first Civil Rights Act passed Aprol 9, 1866 over veto by President Andrew Johnson's objection, who said:

> "The bill invades the judicial power of the States ... and judges of the State Courts and marshals and sheriffs, sanctioned by State laws and issued by state judges ... could be brought before other tribunals and there, subjected to fine and imprisonment for performance of their duties ..."

Representative Lawrence response:

"I answer, it is better to invade the judicial power of the State than permit it to invade, strike down and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily invaded. The grievance would be insignificant."

Senator Trumbull:

"The notion of immunity for such judicial officials is thoroughly discredited. The idea of judicial immunity is akin to the maxim of the English law that 'the King can do no wrong' It places judicial officials above the law. It is the very doctrine out of which the rebellion (the Civil War) was hatched."

Congressional Globe, 42nd Congress , First Session (1871),

Representative Arthur:

"But if the Legislature enact a law, if the Governor enforces it, if the judge upon the bench renders a judgment, if the sheriff levy an execution, execute a writ, serve a summons, or make an arrest, all acting under a solemn official oath, though as pure in duty as a saint, and as immaculate as a seraph, for a mere error in judgment, they are liable."

Senator Shellabarger,Senate Judiciary Committee

"Section 1 of the **1871 Act** provides a civil remedy in identically the same case or on the same state of facts as the 1866 Act and obviously over-

rides whatever immunity may have existed at common law for the participants in the judicial process, in 1871. The basic words of "Every Person and all Persons" are used to intentionally include any judge that knowingly and willfully deprives any person of his Constitutional Rights under color of law ...."

Pierson v Ray, 386 U.S. 547 (1967),

Where a judge acts intentionally and knowingly, to deprive a person of his constitutional rights, he exercises no discretion or individual judgment, he acts no longer as a judge, but as a 'minister' of his own prejudices."

Maki v East Tawas, 188 NW 2d 593, 365 Mich 151 (1971)

"Provision of MCL 691.1407 making all governmental agencies, (Including judges) immune creates immunity for a much broader area.than was intended, creating immunity for acts of negligence and as such, is unconstitutional and invalid."

Jackson v City of Detroit, 192 NW 658, 35 Mich App 591 (1971)

"Provision of MCL 691.1407 purporting to make governmental agencies "immune from tort liability" is unconstitutional."

Hampton v Chicago, 484 F2d 602, 607 (CA7 1973) (J Stevens)

> "Conduct by persons acting under color of state law which is wrongful under 42 USC 1983 or 1985 cannot be immunized by state law. A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise and the supremacy clause of the Constitution insures that the proper construction must be enforced.

Pittman v City of Taylor, 247 NW 2d 512, 398 Mich 41 (1976):

> "Governmental immunity from tort liability was judicially created and may be judicially abrogated. Courts are required to give effect to immunity unless statute, policy or activity violates the Constitution."

George D Owen v City of Independence, Missouri, et al, 485 U.S.622, 63 L Ed 2d 673, 100 S Ct. 1398 (1980):

> "A good faith defense recognized under **1983** authorizes liability only when officials acted with malicious intent or where they knew or should have known that their conduct violated the constitutional norm."

Anderson v Creighton, 483 U.S. 635 (1987):

> "... the contours of the right must be sufficiently

clear that a reasonable official would understand that what he is doing violates that right ... it is to say that in the light of pre-existing law, the unlawfulness must be apparent." (at 640)

Harlow v Fitzgerald, 457 U.S.800 (1982):

"Action for damages may offer the only realistic avenue for vindication of constitutional guarantees.

Malley v Briggs, 475 U.S.335 (1986):

"As a matter of public policy, qualified immunity provides ample protection to all but ... those who knowingly violate the law ...Given malice and the lack of probable cause, magistrate enjoyed no immunity. Common law thus affords no support "

Forrester v White, 484 U.S. 219 (1988):

"A State court judge does not have absolute immunity from a damage suit under 1983 for his decisions ... "

Mireles v Waco, 502 U.S. 9 (1991):

"A judge is not immune for actions, though judicial in nature, taken in the complete absence of jurisdiction.".

Hafer v Melo, 502 U.S. 21 (1991):

"Through 1983, Congress sought "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his

position" ... officials seeking absolute immunity must show that such immunity is justified by the governmental function at issue ... damage awards against individual defendants in federal courts are a permissible remedy in some circumstances. ...

Townsend v Hazdroth, 875 F Supp 1293 (E.D.Mich 1995) (Judge Gadola)

"Governmental immunity, under Michigan law, is an affirmative defense that defendants must prove."

Blanche Road Corp. v Bensalem Twp., 57 F3d, 253 (3rd Cir 1995)

"Government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."

Ireland v Tunis, 113 F.3d 1435 @ 1440 (6th Cir. 1997)

First, a judge is not immune from liability for non-judicial acts, i.e. actions not taken in the judge's judicial capacity. Second a judge is not immune for actions, taken in the complete absence of all jurisdiction.".

OAKLAND COUNTY JUDGES:

"I can do anything I choose to you and you can't touch me. I'm immune from claims."

Appendix C-23 .